



40 CFR Part 52

[EPA-R03-OAR-2020-0554; FRL-9297-01-R3]

Approval and Promulgation of Air Quality Implementation Plan;

Delaware; Emissions Statement Certification for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision formally submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC). The revision provides Delaware's certification that its existing emissions statement program satisfies the emissions statement requirements of the Clean Air Act (CAA) for the 2015 ozone national ambient air quality standard (NAAQS). EPA is approving Delaware's emissions statement program certification for the 2015 ozone NAAQS as a SIP revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2020-0554. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **For Further Information Contact** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2053. Ms. Nichols can also be reached via electronic mail at Nichols.Serena@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 31, 2021 (86 FR 16683), EPA published a notice of proposed rulemaking (NPRM) that proposed approval of Delaware’s certification that its emissions statement regulation meets the emissions statement requirement of Section 182(a)(3)(B) of the CAA for the 2015 ozone NAAQS. The formal SIP revision was submitted by the State of Delaware, through DNREC, on August 3, 2020.

II. Summary of SIP Revision and EPA Analysis

On August 3, 2020, Delaware, through DNREC, submitted as a formal SIP revision, a statement certifying that Delaware’s existing SIP-approved emissions statement program satisfies the emissions statements requirements for the 2015 ozone NAAQS and is at least as stringent as the requirements of CAA Section 182(a)(3)(B). The provisions that implement Delaware’s emissions statements program codified at 7 DE Administrative Code 1117 Section 7.0 and were approved by EPA into the Delaware SIP on April 29, 1996 (61 FR 7415, February 28, 1996). See 40 Code of Federal Regulations (CFR) 52.420(c). Table 1 in this document, summarizes Delaware’s emissions statements provisions and the corresponding CAA Section 182(a)(3)(B) requirements.

Table 1. Delaware Emissions Statements Provisions and CAA Section 182(a)(3)(B) Requirements

CAA Section 182(a)(3)(B)¹ Requirement	7 DE Administrative Code 1117 Section 7.0 Requirement
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¹ Section 182 of the CAA sets out a graduated control program for ozone nonattainment areas. Section 182(a) sets out requirements applicable in marginal ozone nonattainment areas, which are also applicable by Sections 182 (b), (c), (d), and (e) to all other ozone nonattainment areas. See 2015 memorandum titled “Emission Statement Requirement Under 8-hour Ozone NAAQS Implementation,” available online at https://www.epa.gov/sites/production/files/2015-07/documents/8hourozone_naaqs_031406.pdf, Docket ID: EPA-R03-OAR-2020-0554.

182(a)(3)(B)(i) – For marginal nonattainment areas, the State shall submit a SIP revision to require that the owner or operator of each stationary source of nitrogen oxides (NO _x) or volatile organic compounds (VOCs) provide the State with a statement for classes or categories of sources showing the actual emissions of NO _x and VOC from that source.	<p>7 DE Admin Code 1117 Section 7.1 – Emissions statements requirements apply to all stationary sources located in an ozone nonattainment area that emit NO_x or VOC. This would include marginal and above non-attainment areas.</p> <p>7 DE Admin Code 1117 Section 7.2 – Emissions statements are required to include the following information: source identification information, operating data, actual emissions data, control equipment information, and process rate information.</p>
182(a)(3)(B)(i) – Emissions statements are required to be submitted annually.	7 DE Admin Code 1117 Section 7.3 – subject sources must submit to DNREC their annual emissions statements by April 30 for the preceding calendar year. DNREC may require more frequent emissions statements if required by EPA or if more frequent analysis of data is necessary to implement the requirements of Title 7, Chapter 60. Environmental Control of the Delaware Code (7 Del.C. Chapter 60).
182(a)(3)(B)(i) – Emissions statements shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.	7 DE Admin Code 1117 Section 7.2 – Each emissions statement shall include a certification of the data to ensure that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement, who shall be an official of the facility and will take legal responsibility for the emissions statement's accuracy.
182(a)(3)(B)(ii) – The State may waive the requirements for emissions statements for any class or category of stationary sources which emit less than 25 tons per year (tpy) of NO _x or VOCs if the State provides an inventory of emissions from such class or category of sources as required by CAA Section 172 and 182.	7 DE Admin Code 1117 Section 7.1 – DNREC may, with EPA approval, waive the emissions statements requirements for classes or categories of stationary sources with facility-wide actual emissions of less than 25 tpy of NO _x or VOCs if the class or category is included in the base year and periodic ozone SIP emission inventories.

EPA has determined that the SIP-approved provisions under 7 DE Administrative Code 1117 Section 7.0 satisfy the requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS. Therefore, EPA is proposing to approve, as a SIP revision, the State of Delaware's, August 3, 2020 emissions statements certification for the 2015 ozone NAAQS as approvable under CAA Section 182(a)(3)(B).

Other specific requirements of DNREC's June 4, 2020 submittal and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. Two supportive public comments were received on the NPRM.

III. Final Action

EPA is approving, as a SIP revision, the State of Delaware's emissions statement certification for the 2015 ozone NAAQS as approvable under CAA Section 182(a)(3)(B). Delaware's emissions statement certification certifies that Delaware's existing SIP-approved emissions statement program under 7 DE Administrative Code 1117 Section 7.0 satisfies the requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action approving Delaware’s emissions statement certification for the 2015 ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 10, 2022

Diana Esher,
Acting Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

2. In § 52.420, the table in paragraph (e) is amended by adding an entry for “Emissions Statement Certification for the 2015 Ozone National Ambient Air Quality Standard” at the end of the table to read as follows:

§ 52.420 Identification of plan.

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Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
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Emissions Statement Certification for the 2015 Ozone National Ambient Air Quality Standard	Delaware's portion of the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE 2015 ozone NAAQS nonattainment area (i.e. New Castle County)	8/3/20	[insert date of publication in the Federal Register], [insert Federal Register citation]	Certification that Delaware's SIP-approved regulations under 7 DE Administrative Code 1117 Section 7.0 meet the emissions statements requirements of CAA Section 182(a)(3)(B) for the 2008 ozone NAAQS.